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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/654,667

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Kenneth Gould

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22208

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11/25/2008

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EXAMINER

JAKOVAC, RYAN J

ART UNIT

PAPER NUMBER

2445

MAIL DATE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/654,667	<b>Applicant(s)</b> GOULD ET AL.	
	<b>Examiner</b> RYAN J. JAKOVAC	<b>Art Unit</b> 2445	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 September 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 18-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. Claims 18-21 and 25-28 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The packet counter as referenced in the claims is not present in the applicant's disclosure.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 18, 19, 21-26, and 28-31 are rejected under 35 U.S.C. 102(e) as being anticipated by US 2007/0214083 to Jones et al (hereinafter Jones).

Regarding claim 18, 25 teaches a system for providing data filtering from a cable modem termination system (CMTS) in a cable data network comprising: the CMTS, wherein the CMTS comprises a first network interface, a second network interface (Jones, fig. 1), a data gateway agent (Jones, fig. 1-2), and wherein the CMTS is configured for obtaining a packet count from a packet counter, wherein the packet count is determined from at least one of a downstream packet count indicative of packets received via the first network interface and sent to a subscriber device via the second network interface and an upstream packet count indicative of the packets received from the subscriber device via the second network interface for transmission via the first network interface (Jones, [0072], the services granted to the subscriber terminal are monitored including counting the number of packets transmitted or received.); and a datastore accessible to the data gateway agent for storing a selected data transfer rule, wherein a selected data transfer rule comprises packet content criteria selected by a subscriber (Jones, [0072], the policy decision point stores rules about the data transfer. A threshold value is used and monitored regarding the subscriber packet transmission. See also [0035-0036].), and wherein the data gateway agent receives the packets via the first network interface prior to receipt of the packets by the packet counter, accesses the datastore, compares a packet to the packet content criteria (Jones, [0035-0036], [0072], the subscriber terminal monitors packet count and based on a threshold of data transfer enacts rules regarding the subscriber.), and if the packet satisfies the packet content criteria of the data transfer rule, then forwards the packet to the packet counter for counting (Jones, if the subscriber is eligible to receive data, the packets are counted. See at least [0035-0039], [0072].), and if the packet does not satisfy the packet content criteria of the data transfer

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rule then applies a corrective measure to the packet (Jones, [0035-0040], traffic is redirected from the subscriber if they do not meet the threshold necessary for data transfer.).

Regarding claim 19, 26, Jones teaches the system of claim 18, 25, wherein the packet counter is located in the CMTS (Jones, fig. 1-2. See also [0072].).

Regarding claim 21, 28, Jones teaches the system of claim 18, 25, wherein the corrective measures are selected from the group consisting of discarding the packet before counting the packet by the packet counter (Jones, [0035-0040], traffic is redirected (i.e. discarded from subscriber device.); sending the packet to the packet counter and reducing the packet count by one; and before counting the packet by the packet counter, transmitting to the subscriber a notification that the packet does not satisfy the packet content criteria and awaiting a selection by the subscriber whether to forward the packet or discard the packet.

Regarding claim 22, 29, Jones teaches the system of claim 18, 25 wherein the packet content criteria are selected from the group consisting of a source address, a destination address (Jones, [0034-0040], the rules regarding data transfer and thresholds are applied to packets transmitted by or to specific subscriber devices (i.e. source or destination address.)), a URL, a port identifier, a transport protocol identifier, an application protocol identifier, and a keyword in a packet payload.

Regarding claims 23, 24, 31, Jones teaches the system of claim 18, wherein the CMTS further comprises a billing agent and wherein the billing agent is configured to receive a subscriber count trigger and to transmit a count message to the subscriber comprising a current packet count upon the occurrence of the subscriber count trigger (Jones, [0083-0087]. See also [0037-0038] which discloses a web page notification upon meeting a threshold value (i.e. subscriber count trigger)).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 20, 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones.

Regarding claim 20, 27, Jones teaches the system of claim 18, 25. Jones does not expressly disclose wherein the packet counter is located in the subscriber device, however, placing the packet counter in the subscriber device is an obvious variation of Jones and therefore it would have been obvious to one of ordinary skill in the art at the time of invention to use packet counters in the subscriber device. See *KSR v. Teleflex*, 550 U.S. \_\_\_, 127 S. Ct. 1727, 82 U.S.P.Q.2d 1385 (2007).

***Response to Arguments***

6. Applicant's arguments with respect to claims 1—31 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RYAN J. JAKOVAC whose telephone number is (571)270-5003. The examiner can normally be reached on Monday through Friday, 7:30 am to 5:00 pm EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason D. Cardone can be reached on (571) 272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/RJ/

/Larry D Donaghue/

Primary Examiner, Art Unit 2454